

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Case No. 08-13150

Honorable Sean F. Cox

Anthony D. Rippey,

Defendant.

OPINION GRANTING
GOVERNMENT'S UNOPPOSED MOTION FOR SUMMARY JUDGMENT

This matter is currently before the Court on the Government's Motion for Summary Judgment, which was filed on March 12, 2009. Defendant has not filed any response in opposition to the motion. The Court held a hearing on the motion on June 4, 2009. For the reasons below, the motion shall be GRANTED.

BACKGROUND

Plaintiff United States of America ("the Government") filed this action on July 22, 2008, seeking a judgment against Defendant Anthony D. Rippey ("Defendant") for an unpaid student loan.

Acting *pro se*, on December 17, 2008, Defendant filed an Answer, wherein he acknowledges that he applied for, and received, the student loan in question. He asserts, however, that unidentified administrators of the school he attended advised him that he "would not have to pay back the loan" after he dropped out of the truck driving training course that he had signed up for. (Docket Entry No. 4).

On March 12, 2009, the Government filed a Motion for Summary Judgment. (Docket

Entry No. 9).

On March 17, 2009, this Court sent written notice to the parties advising that the Government had filed the above motion and scheduling it to be heard by the Court on June 4, 2009. (Docket Entry No.11).

Pursuant to Rule 7.1(b) of the Local Rules for the United States District Court for the Eastern District of Michigan, a “respondent opposing a motion must file a response, including a brief and supporting documents then available.” Rule 7.1(d) further provides that a response to a dispositive motion must be filed within 21 days after service of the motion. Thus, if Defendant opposes the Government’s pending Motion for Summary Judgment, Defendant was required to file a brief in opposition to same within 21 days of service of the motion.

Although the time permitted under Local Rule 7.1 for filing a response to the pending motion passed, no brief in opposition to the motion was filed by Defendant. Accordingly, on April 30, 2009, this Court issued an Order to Show Cause that ordered Defendant to show cause, in writing, no later than May 8, 2009, why the unopposed pending Motion for Summary Judgment filed by the Government should not be granted. (Docket Entry No. 12). Defendant, however, did not file any response to the Show Cause Order.

ANALYSIS

To recover on a promissory note the government must first make a prima facie showing that: (1) the defendant signed it, (2) the government is the present owner or holder and (3) the note is in default. *United States v. Petroff-Kline*, 557 F.3d 285, 290 (6th Cir. 2009). “For that purpose, the government may introduce evidence of the note and a sworn transcript of the account or certificate of indebtedness.” *Id.* “Once such a prima facie case is established, defendant has the burden of proving the nonexistence, extinguishment or variance in payment on

the obligation.” *Id.*

In seeking summary judgment, the Government has attached a copy of the promissory note signed by Defendant, along with a Certificate of Indebtedness and an affidavit from Lynda Faatalale, a Loan Analyst with the United States Department of Education. Thus, the Government has established a prima facie case.

The burden then shifts to Defendant to prove the nonexistence, extinguishment or variance in payment on the obligation. Here, however, Defendant has failed to file any written response in opposition to the Government’s properly supported Motion for Summary Judgment and has not presented any evidence to the Court. Accordingly, Defendant has failed to meet his burden and the Government is entitled to summary judgment.

CONCLUSION

For the reasons above, the Court shall grant the Government’s Motion for Summary Judgment. An Order shall be issued forthwith.

S/ Sean F. Cox
United States District Judge

Date: June 8, 2009

I hereby certify that on June 8, 2009, a copy of the foregoing document was served upon counsel of record by electronic means and by First Class Mail upon:

Anthony D. Rippy
1410 Washington Blvd., Apt #803
Detroit, MI 48226

S/ Jennifer Hernandez
Case Manager